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January 5, 2016

VIA ECF

Honorable Andrew J. Peck
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Martin et al. v. City of New York
Docket No. 14 Civ. 8950 (TPG)(AJP)

Dear Judge Peck:

This is in response to the Court's proposed resolution of the settlement in the above-referenced case that the plaintiffs' contingent fee be calculated only on the damages that the City is paying and that attorneys' fees paid by the City not be included in the calculation of the contingent fee, but rather be used to offset the contingent fee to be paid by the plaintiffs. This method is contrary to the clear trend in the Second Circuit in which the contingent fee in wage and hour cases is calculated using the common fund method – i.e., the contingent fee is calculated using all of the monies recovered on behalf of the plaintiffs inclusive of backpay, liquidated damages and attorneys' fees. *E.g., Deleon v. Wells Fargo Bank*, N.A.2015 U.S. Dist. LEXIS 65261 at *5 (S.D. N. Y. 2015); *Johnson v. Brennan*, 2011 U.S. Dist. LEXIS 105775 at *39 (S.D.N.Y. Sept. 16, 2011); *deMunecas v. Bold Food, LLC*, 2010 U.S. Dist. LEXIS 87644 at *20-21 (S.D.N.Y. Aug. 23, 2010). *See generally* *McDaniel v. County of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010)(Common fund method applied in non-wage civil rights case). In addition, this method is contrary to the retainer agreement that 327 of the plaintiffs signed and about which the remaining 215 plaintiffs were aware upon joining the case.

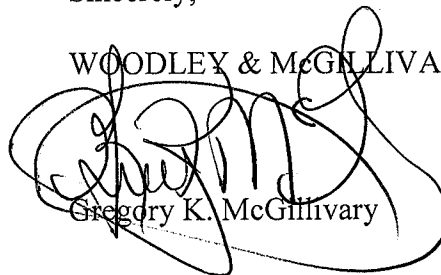
Nonetheless, to expedite the resolution of this case, and to ensure that there is no further delay in the payment of damages to our clients and the approval of the settlement, plaintiffs'

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counsel consents to the method of calculating the plaintiffs' contingent fee proposed by the Honorable Magistrate Judge Andrew J. Peck in his entry on January 4, 2016.

Sincerely,

WOODLEY & MCGILLIVARY LLP

A large, stylized handwritten signature in black ink, which appears to be "G. McGilivary", is written over the printed name and firm name.

Gregory K. McGilivary

cc: Hope Pordy
Andrea O'Connor